

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**NEW YORK STATE RESTAURANT  
ASSOCIATION,**

**Plaintiff,**

**- against -**

**NEW YORK CITY BOARD OF HEALTH,  
NEW YORK CITY DEPARTMENT OF HEALTH  
AND MENTAL HYGIENE, and Thomas R. Frieden,  
In His Official Capacity as Commissioner  
of the New York State Department of Health  
and Mental Hygiene,**

**Defendants.**

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**No. 2007 Civ. \_\_\_\_\_**

**DECLARATION OF PETER L. ZIMROTH  
IN SUPPORT OF ORDER TO SHOW CAUSE**

Peter L. Zimroth declares as follows:

1. I am a member of the bar of this Court and of the firm of Arnold & Porter LLP, counsel for the Plaintiff New York State Restaurant Association in the above-captioned case. I submit this declaration in support of the Plaintiff's motion, by order to show cause, for a preliminary injunction enjoining Defendants from enforcing New York City Health Code section 81.50 ("Regulation 81.50").

2. As detailed in the Complaint and accompanying papers filed simultaneously with the Order to Show Cause, Plaintiff has commenced this action for permanent injunctive relief and declaratory judgment because (i) enforcement of Regulation 81.50 violates Plaintiff's members' First Amendment Rights; and (ii) Regulation 81.50 is preempted by federal law.

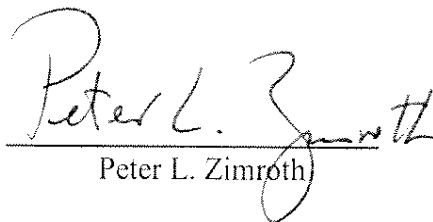
3. Plaintiff is proceeding by Order to Show Cause, rather than by notice of motion, because Regulation 81.50 is scheduled to take effect on July 1, 2007, sixteen days from today, thus requiring expedited consideration of Plaintiff's claims for declaratory judgment and request for preliminary injunctive relief. If not restrained before July 1st, Defendants' enforcement of Regulation 81.50 will cause irreparable harm to the First Amendment rights of Plaintiff's members.

4. In order that this matter can be heard and decided before July 1, 2007, we respectfully request the following briefing schedule: Defendants' opposition papers shall be filed and served by hand by 5:00 p.m. on or before June 22, 2007; Plaintiff's reply papers shall be filed and served by hand by 12:00 p.m. on or before June 26, 2007. Subject to the Court's schedule, we request that the Court set a hearing for June 27, 2007, or as soon thereafter as counsel can be heard. I have advised Mark Muschenheim, counsel for Defendants, of this proposed schedule.

5. No previous application for relief sought herein has been made to this or any other court.

6. I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on June 14, 2007  
New York, New York

  
Peter L. Zimroth